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55648 7590 09/28/2009 KEVIN L. RUSSELL CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204				
EXAMINER NGUYEN, LUONG TRUNG				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GEORGE R. BORDEN IV

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Appeal 2009-003173  
Application 09/823,050  
Technology Center 2600

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Decided: September 28, 2009

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Before KENNETH W. HAIRSTON, MARC S. HOFF,  
and THOMAS S. HAHN, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection of claims 33 to 44 and 46 to 52.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We will sustain the obviousness rejections.

Appellant's invention is concerned with a calendar-based photo browser.<sup>2</sup> Appellant's claimed invention is directed to an interface of a calendar-based photo file browsing system for browsing a plurality of digital files, each digital file having an associated date.<sup>3</sup> The system includes a calendar portion having a range of dates displayed, and a browsing portion that allows a user to increment the date range by a month or a portion of a month (e.g., a day or a week).<sup>4</sup>

Claim 33, reproduced below, is representative of the subject matter on appeal:

33. A calendar-based photo file browsing system for browsing a plurality of files including at least one of a digital image or a digital video, each said digital file having an associated date, said system having an interface displayed on a display, said interface comprising:

(a) a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date; and

(b) a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month.

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<sup>1</sup> Claims 1 to 33 and 45 have been canceled.

<sup>2</sup> See Title; Spec. 1; Figs. 1, 2.

<sup>3</sup> See claims 33, 43.

<sup>4</sup> See *generally* Spec. 3-8; claims 33, 43.

The Examiner relies upon the following as evidence of unpatentability:

Peairs	US 6,085,205	Jul. 4, 2000
Phillips	US 6,186,553 B1	Feb. 13, 2001
Suzuki	US 6,590,585 B1	Jul. 8, 2003

The following rejections are before us for review:

(i) Claims 33 to 38, 40 to 44, 46 to 48, and 50 to 52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Suzuki and Phillips.

(ii) Claims 39 and 49 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Suzuki, Phillips, and Peairs.

The Examiner relies upon Suzuki as disclosing the claimed invention as set forth in claims 33 and 43, except for the browsing portion enabling the user to selectively increment the date range by a portion of a month (Ans. 3). The Examiner relies upon column 8, lines 1 to 5 of Phillips as disclosing calendar software for selectively incrementing a date range by a portion of a month (Ans. 3-4, 8-9).

Appellant admits that Suzuki discloses the limitation of paragraph (a) recited in each of independent claims 33 and 43 of, “a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date” (Reply Br. 4). Appellant argues (App. Br. 5-6; Reply Br. 4) that neither Suzuki nor Phillips teaches the limitation of paragraph (b) recited in each of independent claims 33 and 43 of, “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month” (claims 33 and 43). More specifically, Appellant contends

(Reply Br. 4) that Phillips does not disclose any technique for incrementing the range of dates used to create a calendar. Finally, Appellant contends (Reply Br. 4-5) that it would not have been obvious to the ordinarily skilled artisan to modify Suzuki to increment Suzuki's monthly date because Phillips does not teach incrementing a date range that is *already displayed* on the calendar to a new range.

### ISSUES

Based on Appellant's arguments, the issue before us is: Has Appellant demonstrated that the Examiner erred by finding that Suzuki and Phillips, whether considered singly or in combination, teaches "a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month," as set forth in claims 33 and 43?

### FINDINGS OF FACT

1. As indicated *supra*, Appellant describes and claims an interface of a calendar-based photo file browsing system (Figs. 1 and 2) for browsing a plurality of digital files, each digital file having an associated date and thumbnail image 60. The system includes a calendar portion 10 having a range of dates 20 displayed, and a browsing portion 28 that allows a user to increment the date range 20 by a month (e.g., using buttons 32) or a portion of a month (e.g., using buttons 34 and/or 35) (*see generally* Spec. 3-8).
2. Suzuki describes a calendar-based photo file browsing system interface (Fig. 28; col. 22, ll. 1-28) including a calendar display

- window 261 having a range of displayed dates, and a browsing portion allowing a user to selectively increment the date range by a month. The screen view is created by an audio/visual (AV) content management and search program 82 using input devices such as a computer keyboard 28 and mouse 29 of a personal computer 1 (Figs. 1 and 2).
3. Phillips describes a customizable calendar-based photo file browsing system (Figs. 5, 7, 8) having an interface allowing for arbitrary designation of time periods (i.e., date ranges) by arbitrarily selecting a starting date and a target date with a calendar creation program 802 (col. 2, ll. 1-6; Abstract).
  4. The calendar creation program 802 includes calendar generation software having “intelligent and flexible calendaring capabilities” (col. 7, ll. 61-62) such that a customized calendar generating system is provided that “is highly scalable to accommodate varying degrees of functionality, sophistication and complexity” (col. 7, ll. 33-35). Phillips describes that one way to provide this flexibility is to allow a user to manipulate or create graphical content in a computing or processing environment using “suitable input and output devices” (col. 8, l. 13) along with “hardware or software, or a combination of the two” (col. 8, ll. 8-9) (*see generally* col. 8, ll. 5-18).
  5. Phillips discloses that “[c]ustomized theme calendars can be tailored to virtually any anticipated event or occasion. For example, by selecting appropriate parameters such as themes, starting and target dates, configurations and the like, a calendar could be customized” (col. 4, ll. 58-62), and the starting date of an arbitrarily selected event

- can even be designated to occur in a previous month if needed (col. 4, ll. 37-53).
6. More specifically, Phillips discloses that “[t]he selected date range allowed by the calendar creation software could be virtually any size (e.g., 2-100 days) and could span month or year boundaries as desired” (col. 8, ll. 1-4).

### PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). The Examiner’s articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellants have the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See Kahn*, 441 F.3d at 985-86.

### ANALYSIS

We agree with the Examiner’s findings of fact and conclusions of obviousness with respect to claims 33 and 43 (Ans. 3-6, 8-9), and adopt them as our own, along with some amplification of the Examiner’s explanation of the teachings of Suzuki (*see* FF 2) and Phillips (*see* FF 3-6).

Appellant's argument (App. Br. 5-6; Reply Br. 4-5) that column 8, lines 1 to 5 of Phillips merely discloses calendar generation software for creating a calendar displaying a *fixed* date range, and that Phillips' date range cannot be incremented at all, is unpersuasive in light of our findings with regard to Phillips (*see* FF 3-6). We agree with the Examiner (Ans. 8-9) that Phillips discloses allowing a user to select a portion of a month for incrementing a date range.

Phillips discloses suitable input and output devices and calendar generation software/hardware in a computing/processing environment for creating and manipulating date ranges (*see* col. 8, ll. 5-18) to provide "flexible calendaring capabilities" (col. 7, l. 61) (FF 4). This includes selecting a date range of "virtually any size (e.g., 2-100 days) and could span month or year boundaries as desired" (col. 8, ll. 2-4; FF 6).

Although Phillips displays a fixed date range (*see* Fig. 5), the date range is capable of being selectively incremented via the calendar generation software and input devices. And although Phillips discloses that the software "*could* auto-select date ranges" (col. 7, l. 63 (emphasis added)), this is only one disclosed possibility, because Phillips also discloses the possibility of allowing a user to customize a calendar to select date ranges of *any size*, including portions of a month (FF 6). Phillips discloses allowing a user to customize calendars "to virtually any anticipated event or occasion . . . by selecting appropriate parameters such as . . . starting and target dates, configurations and the like" (col. 4, ll. 58-61; FF 5). Each time a calendar is changed or customized, the user selectively increments the date range.



The combined teachings of Suzuki and Phillips would have taught or suggested to one of ordinary skill in the art displaying a date range and then selectively incrementing the displayed date range in increments of a month or a portion of a month. We agree with the Examiner that it would have been obvious to the skilled artisan to modify the system, calendar portion, and browsing portion of Suzuki with the calendar creation software of Phillips to allow a user to selectively increment date ranges in increments of portions of a month in order to allow a user to select any desired range (Ans. 4, 6, 9). *Kahn*, 441 F.3d at 988; *Fine*, 837 F.2d at 1073. In addition, one of ordinary skill in the art would have found it obvious to combine the teachings of Suzuki with the teachings of Phillips (i) since both are in the same field of endeavor as Appellant's invention of computerized calendar-based photo file browsing systems having displays (*compare* FF 1 with FF 2, 3), and (ii) in order to provide users with increased calendaring flexibility, functionality, and creation capabilities as suggested by Phillips (FF 4).

In view of the foregoing, Appellant's arguments that (i) Phillips does not disclose any technique for incrementing the range of dates used to create a calendar (Reply Br. 4), and (ii) it would not have been obvious to the ordinarily skilled artisan to modify Suzuki to increment Suzuki's monthly date (Reply Br. 4-5), are unpersuasive. Appellant has not convincingly rebutted the Examiner's *prima facie* case of obviousness with respect to claims 33 and 43. *Oetiker*, 977 F.2d at 1445.

We will sustain the obviousness rejection of claims 33 and 43 based upon the teachings of Suzuki and Phillips. The same holds true for claims 34 to 38, 40 to 42, 44, 46 to 48, and 50 to 52 which were argued with claims 33 and 43 (App. Br. 6). The obviousness rejection of claims 39 and 49 is

also sustained because Appellant has not presented any patentability arguments for these claims apart from the arguments presented for claims 33 and 43 (*see* App. Br. 6).

#### CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in finding that Suzuki and Phillips, whether considered singly or in combination, teaches “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month,” as set forth in claims 33 and 43.

#### ORDER

The decision of the Examiner to reject claims 33 to 44 and 46 to 52 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED

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